

OSA No.8/2016
C/W CA NO.237/2023, CA NO.46/2024 &
CA NO.350/2023 IN COP NO.34/2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE C M JOSHI

OSA NO.8/2016

C/W

CA NO.237/2023, CA NO.46/2024 &

CA NO.350/2023 IN COP NO.34/2014

IN OSA NO.8/2016:

BETWEEN:

SHRISHMA FINE CHEMICALS AND
PHARMACEUTICALS LTD. EMPLOYEES UNION
REP BY ITS GENERAL SECRETARY,
NO.211, II CROSS, 4TH MAIN,
4TH STAGE, B.E.M.L. LAYOUT,
RAJARAJESWARI NAGAR,
BENGALURU - 560 098.

...APPELLANT

(BY SRI. S.P. SHANKAR, SENIOR COUNSEL A/W
SMT. MAMATA G. KULKARNI, ADVOCATE)

AND:

- 1 . M/S. SWAMY CONSTRUCTION COMPANY
HAVING ITS OFFICE AT NO.2, I FLOOR,
100 FT ROAD, 5TH BLOCK,
KORAMANGALA, BENGALURU-560 034.
REP BY ITS PROPRIETOR
B KRISHNASWAMY
- 2 . M/S SHRISHMA FINE CHEMICALS AND
PHARMACEUTICALS (KARNATAKA) LTD.,
(WHICH WAS UNDER LEGISLATION NEW)

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HAVING ADMINISTRATIVE OFFICE AT
I FLOOR, SHIVAPRASAD COMPLEX,
NO.1/1, MUSEUM ROAD, BANGALORE-560 001.
AND HAVING ITS REGD OFFICE AT PLOT NO.30,
INDUSTRIAL AREA, DODDABALLAPUR,
BANGALORE RURAL DISTRICT 561 203.
REP BY ITS CHAIRMAN & MANAGING DIRECTOR

- 3 . KARNATAKA INDUSTRIAL AREA DEVELOPMENT BOARD,
NO.14/3, 2ND FLOOR,
RASHTROTHANAPARISHAD BUILDING.,
NRUPATHUNGA ROAD,
BANGALORE-560 001.
- 4 . J SHIVAPRASAD
AGED ABOUT 47 YEARS,
S/O SRI K M JAYARAMAIAH
NO.73, RAILWAY PARALLEL ROAD,
KUMARAPARK WEST, BENGALURU-560 020.
- INDUSTRIAL DEVELOPMENT
5. BANK OF INDIA, NO.58, IDBI HOUSE,
MISSION ROAD, BENGALURU – 560 027.
- 6 . S D V IRON WORKS
REP BY ITS PROPRIETOR,
MR KONGATISATHYANARAYANA
HAVING OFFICE AT NO.1
GANGAMA TEMPLE STREET
DRIVERPET, KRISHNALANKA,
VIJAYAWADA 520 103 (A.P)

...RESPONDENTS

(BY SRI. VIKRAM HUILGOL, SENIOR COUNSEL A/W
SRI. SAMMITH S.,ADVOCATE FOR R2 & R6;
SRI. P.V. CHANDRASHEKAR, ADVOCATE FOR R3;
SRI. THOMAS V. PETER, ADVOCATE FOR R4;
SMT. SOWMYA R., ADVOCATE FOR IA'S IN IA NO.1/22 &
I.A.NO.2/23;
RESPONDENT NO.5 IS SERVED AND UNREPRESENTED;
V.C.O DATED 8/12/2018 SERVICE TO RESPONDENT NO.1
IS H/S)

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THIS OSA IS FILED UNDER SECTION 483 OF THE COMPANIES ACT, 1956, R/W RULES 6 AND 9 OF THE COMPANIES (COURT) RULES, PRAYING THIS HON'BLE COURT TO SET ASIDE THE ORDER DATED 23.6.2015 MADE IN COMPANY PETITION NO. 55/1997, COMPANY APPLICATION NO. 497/2013 AND COMPANY APPLICATION NO.2380/2013 IN COMPANY PETITION NO.55/1997 CONNECTED WITH C.O.P. NO. 34/2014 AND IN REVIEW PETITION NO 498/2015 AND REVIEW PETITION NO.740-742/2015 AND PASS APPROPRIATE ORDERS TO MEET THE ENDS OF JUSTICE, AND ETC.,

IN CA NO.237/2023
IN COP NO.4/2014:

BETWEEN:

1. T ANAND MOHAN
S/O T THAMMAIAH,
AGED ABOUT 55 YEARS,
DOOR NO.11/30, 4TH CROSS,
LIC (IH) COLONY, 3RD BLOCK EAST,
BANGALORE – 560 011.
2. P SRINIVASA REDDY S/O PILLA REDDY,
AGED ABOUT 52 YEARS,
RESIDING AT NO.288/A, 23RD CROSS,
17TH C MAIN, 3RD SECTOR, HSR LAYOUT,
BENGALURU-560 068.

...APPLICANTS

(BY SRI.RAKESH BHAT., ADVOCATE)

AND:

1. SHRISHMA FINE CHEMICALS AND
PHARMACEUTICALS(K) LIMITED,,
REGISTERED OFFICE AT PLOT NO.30,
INDUSTRIAL AREA, VEERAPURA POST,
DODDABALLAPUR,
BANGALORE RURAL 561 203
REPRESENTED BY ITS DIRECTOR

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2. SDV IRON WORKS,
GANGANAMMA TEMPLE STREET
DRIVERPET, KRISHNALANKA,
VIJAYAWADA – 520 013.
REPRESENTED BY ITS PROPRIETOR
MR.KONGATISATYNARAYANA.

...RESPONDENTS

(BY SRI.S P SHANKAR., SENIOR COUNSEL A/W
SMT. MAMATA G KULKARNI., ADVOCATE FOR R1;
SRI. VIKRAM HUILGOL., SENIOR COUNSEL A/W
SRI. SAMMITH S., ADVOCATE FOR R2)

THIS COMPANY APPLICATION FILED U/S 392 OF THE COMPANIES ACT, 1956 WITH RULE 6 AND 9 OF COMPANY COURT RULES 1959 PRAYING TO A) RESTRAIN THE RESPONDENT COMPANY REPRESENTED BY ITS PROPOUNDER FROM SELLING THE SCHEDULE PROPERTIES (IMMOVABLE PROPERTIES) AND DIRECT THE RESPONDENT NO.2 TO REVIEW THE RESPONDENT NO.1 COMPANY BY RESTARTING THE FACTORY AND REINSTATE THE APPLICANTS AS ITS EMPLOYEES WITH ALL BENEFITS AND ETC.,

IN CA NO.46/2024
IN COP NO.34/2014:

BETWEEN:

S VASU,
AGED ABOUT 61 YEARS,
S/O LATE S Y BABU RAO ,
NO 47, CHAMAKADAHAMA LAYOUT,
2ND STAGE, BANNEGHATTA VILLAGE,
BENGALURU 560 083.

...APPLICANT

(BY SRI.S VASU., PARTY IN PERSON)

AND:

1. SHRISHMA FINE CHEMICALS AND
PHARMACEUTICALS (K) LTD,
REGD OFF PLOT NO 30, INDUSTRIAL AREA,
DODDABALLPUR 561 203.

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2. SDV IRON WORKS
REPRESENTED BY ITS PROPRIETOR
K SATYANARAYANA
GANGAMMANA TEMPLE STREET
KRISHNA LANKA, VIJAYAWADA 520 013.

...RESPONDENTS

(BY SRI.S P SHANKAR., SENIOR COUNSEL A/W
SMT. MAMATA G KULKARNI., ADVOCATE FOR R1;
SRI. VIKRAM HUILGOL., SENIOR COUNSEL A/W
SRI. SAMMITH S., ADVOCATE FOR R2)

THIS COMPANY APPLICATION FILED UNDER SECTION 392
OF COMPANIES ACT, 1956 READ WITH RULE 6 AND 9 OF THE
COMPANY COURT RULES, 1959, SECTION 151 OF CIVIL
PROCEDURE CODE, PRAYING TO ISSUE A DIRECTION TO THE
RESPONDENTS NO.1 & 2 , TO FORTHWITH IMPLEMENT THE
SCHEME OF ARRANGEMENT AS PER ORDER DATED 23.06.2015,
SANCTIONED BY THIS HON'BLE HIGH COURT IN ACCORDANCE
WITH THE TERMS THEREIN AND ETC.,

IN CA NO.350/2023
IN COP NO.34/2014:

BETWEEN:

M RAJANNA
S/O CHANNAPPA,
AGED ABOUT 40 YEARS,
BLOCK NO.31B, KIADB QUARTERS,
BASHETTIHALLI, DODDABALLAPURA

...APPLICANT

(BY SRI.THOMAS V PETER.,ADVOCATE)

AND:

1 . SHRISHMA FINE CHEMICALS AND
PHARMACEUTICALS (K) LTD.,
REGD OFFI PLOT NO 30,
INDUSTRIAL AREA,
DODDABALLAPURA 561 203.

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- 2 . SDV IRON WORKS,
REP BY ITS PROPRIETOR,
K SATAYANARAYANA,
KRISHNA LANKA,VIJAYWADA, AP.
- 3 . THE REGISTRAR OF COMPANIES
2ND FLOOR, ENRIYA SADAN, KORAMANGALA,
BENGALURU 560 037.
- 4 . THE OFFICIAL LIQUIDATOR
12TH FLOOR, RAHEJA TOWERS
MG ROAD, BENGALURU 560 001.
- 5 . THE CHIEF EXECUTIVE OFFICER
KIADB, 4TH AND 5TH FLOOR,
KHANIJA BHAVANA, RACE COURSE ROAD .
BENGALURU 560 001.

...RESPONDENTS

(BY SRI.S P SHANKAR., SENIOR COUNSEL A/W
SMT. MAMATA G KULKARNI., ADVOCATE FOR R1;
SRI. VIKRAM HUILGOL., SENIOR COUNSEL A/W
SRI. SAMMITH S., ADVOCATE FOR R2;
SMT. PREMA HATTI., ADVOCATE FOR R3;
SMT. KRUTIKAR RAGHAVAN., ADVOCATE FOR R4;
SRI. P V CHANDRASHEKHAR., ADVOCATE FOR R5)

THIS COMPANY APPLICATION IS FILED UNDER RULE 6 & 9 OF THE COMPANY COURT RULES,1959 SECTION 151 OF CIVIL PROCEDURE CODE, PRAYING TO A) ISSUE A DIRECTION TO THE RESPONDENTS NO.1 & 2 TO FORTHWITH IMPLEMENT THE SCHEME OF ARRANGEMENT DATED 23.06.2015, SANCTIONED BY THIS HON'BLE HIGH COURT IN ACCORDANCE WITH THE TERMS THEREIN AND ETC.,

THIS OSA AND THESE APPLICATIONS IN COP HAVING BEEN RESERVED FOR ORDER, COMING ON FOR PRONOUNCEMENT THIS DAY, **KRISHNA S. DIXIT.J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE C M JOSHI

CAV JUDGEMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This appeal is preferred against the Order dated 23/06/2015 passed in COP 55/1997 along with CA 497/2013 and CA 2380/2013 c/w COP 34/2014 and Order dated 11/04/2016 in RP 498/2015 and RP 740-742/2015, wherein petition in COP 34/2014 is allowed approving the scheme of arrangement for revival of the Respondent No.2 by Respondent No.6 and further disposal of RP by observing that Respondent No.2 is duty bound to honour any adjudication in terms of any application filed by the employees under S.33(c)(i) of the Industrial Disputes Act,1947 for recovery of money due from the employer, if any, and further to consider their application for re-employment in the revived concern.

2. The following company applications were filed in COP 34/2014:

2.1 **CA 237/2023** –is filed by a group of former employees of 2nd respondent, *inter alia*, to restrain the alienation of the immovable properties; to revive Shrishma

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Fine Chemicals and Pharmaceuticals (Karnataka) Ltd. by restarting it and reinstate the Applicants as its employees with all benefits.

2.2 **CA 350/2023** –is filed by a former employee of Respondent No.2, *inter alia*, to issue a direction to implement the Scheme of Arrangement dated 23/06/2015 and reinstate the Applicant as its employee.

2.3 **CA 46/2024** – is filed by another former employee of Respondent No.2, *inter alia*, seeking direction to implement the Scheme dated 23/06/2015 and reinstate the employees in terms thereof; to set aside sale of part of land done by M/s Shrishma Fine Chemicals and Pharmaceuticals (Karnataka) Ltd. (and its propounder) dated 13/12/2023; declare the sale of lands to be null & void; consequently, to direct the jurisdictional Sub-Registrar to cancel the registration of sale of land; direct the Respondents to not sell the balance lands, and to declare that any arrangements/understandings entered into are null & void.

3. OSA 8/2016 was filed subsequent to the disposal of RP No. 498/2015 in 2016. Finally, the matter was taken up for final hearing in 2023. Thereafter, as discussed *infra*, appeal had been dismissed for non-prosecution, but later revived. In the interregnum, CA No. 237/2023, CA No.

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350/2023 & CA 46/2024 were instituted. The subject matter of all these proceedings is essentially premised on (i) The acceptance of Scheme of Revival propounded by Respondent No.6 in respect of 2nd respondent (ii) the implementation of Scheme and (iii) the violation of terms of Scheme as approved by the Company Court.

3.1 In the above backdrop, learned Senior Counsel appearing for the appellant in OSA on 28/02/2024, in his usual fairness, submitted that there are pending company petitions in respect of same matter, which will affect the merits of the matter, and it would be apposite that all pending company petitions & applications are considered analogously with the original side appeal. The same submission was reiterated on 28/03/2024. Accordingly, all these matters were consolidated for disposal by a common order, to avoid conflicting judicial opinions.

4. Foundational facts:

4.1 2nd respondent's company was incorporated on 24/07/1981 under the name and style of "Shrishma Fine Chemicals and Pharmaceuticals Pvt. Ltd." and subsequently, converted into a public limited company with effect from 24/03/1983 and the name was also changed to "Shrishma Fine Chemicals and Pharmaceuticals

(Karnataka) Ltd". It was in the business of *inter alia*, for the manufacture, import and export of Salicylic acid, aspirin and other chemicals. During the period between 1983 – 1989 petitioner company was allotted several lands by KIADB in Veerapura village and Majarahosahalli village for the establishment of the industrial concern.

4.2 The Respondent No.2 company unfortunately was embroiled in losses and the management was changed between 1992 to 1994. Ultimately, the company was referred to the Board for Industrial and Financial Reconstruction ("BIFR") *vide* Reference No. 152/1997 to declare Respondent No.2 as a "Sick Industrial Concern". Parallely, certain creditors filed winding up petitions under S.433 (e) of the erstwhile Companies Act, 1956, being COP No. 55/1997 and COP 147/1998. The BIFR too, recommended winding up of the Respondent No.2 on 02/01/2006 in COP 88/2006, against which some of the Applicants in CA 237/2023 and other employees approached the Appellate Authority for Industrial and

Financial Reconstruction ("AAIFR"), which directed the Appellants therein to approach this Court along with other Company Petitions, pursuant to which COP Nos. 448/2006, 613/2006 and 732/2006 were filed. All the above matters were connected together and disposed by a common order dated 27/07/2006 where the Learned Single Judge of this Hon'ble Court directed winding up of Respondent No.2. The said Order dated 27/07/2006 came to set aside by a co-ordinate bench on 04/10/2007 in OSA Nos. 34 & 35/2006, and the matter was remanded to the Learned Single Judge. Even upon reconsideration, the Learned Single Judge again ordered winding-up by order dated 20/03/2012.

4.3 Subsequently, CA Nos. 321/2010 and 2064/2013 filed by Respondent No.6 seeking for approval of 'Scheme of Arrangement' came to be allowed *vide* Order dated 19/11/2013 by approving the 'Scheme of Arrangement', as accepted by the all the Creditors of Respondent No.2. The stakeholder meeting was directed to be convened on

23/01/2014 and by giving advance meeting notices in the English and the vernacular newspapers on or before 31/12/2013. Pursuantly, the Chairman of the meeting filed his report on 05/02/2014. Consequently, COP No. 34/2014 filed by Respondent No.6 seeking for revival of Respondent No.2 was allowed by Order dated 23/06/2015, which is impugned in the present appeal.

4.4 Against the Order dated 23/06/2015, an application for review was filed by the present appellants which was registered as RP No. 740-742/2015, the Learned Single Judge of this Court held that since there is no application preferred by the appellants under S.33(c)(1) of the Industrial Disputes Act,1947, no liability can be fastened on the Respondent No.2 towards the dues of the employees. Further, the submissions of the Learned Senior Counsels appearing for both the Appellants and the Respondents, that if the applications are made by qualified workmen, their case for employment would be considered, was also recorded. With the above observations, the

Review Petitions came to be disposed, which is also impugned in the present original side appeal.

5. Learned Senior Counsel Sri. S.P Shankar appearing for Smt.Mamata Gururao Kulkarni, for the Appellant in OSA 8/2016 submitted as follows:

5.1 That the appellant is a trade union of the workmen employed by Respondent No.2 until 02/01/1992 when there was an illegal lockout. The said lockout came to be declared as illegal by the Labour Court, Bengaluru in Ref. No. 10/1992 and workmen were directed to report from duty from 18/02/1994; however upon change of management a Notice came to be issued to the workmen on 27/04/1994 stating that the new management had decided to close down the company. Several proceedings were filed before the Labour Court Bengaluru challenging the above dismissal/retrenchment; however the same has not been conclusively determined. Pursuant to the BIFR's recommendation for winding-up Respondent No.2, workmen filed objections opposing the winding-up.

However, the applications of the workmen were rejected and winding-up order was passed in CA 448/2006 in COP 55/1997.

5.2 Aggrieved by the dismissal, the appellants filed OSA 35/2006. The appeal came to be allowed and the matter was remanded for fresh consideration of the company court. Thereafter, Respondent No. 6 appeared to have approached the secured creditors for assignment of their debts for a paltry consideration of INR.2.4 crore as against the liability of INR. 51.69 crore. Pursuant to the same, Respondent No. 6 had filed CA 321/2010 for convening stakeholder meetings, which came to be rejected upon the objections filed by the Appellants and an order of winding-up came to be passed on 20/03/2012. Subsequently, another attempt was made by Respondent No.6 by filing CA 2064/2013 and COP No. 34/2014, which came to be allowed by the impugned order by which the Scheme propounded by Respondent No. 6 to revive 2nd respondent was accepted.

5.3 The learned Senior Counsel argued that the impugned order is erroneous since the appellant was not heard prior to recalling the winding-up order, and despite having a right to be impleaded, the appellant was never impleaded. The Company Court has not put Respondent no. 6 propounder to terms in respect of the apprehensions cast by the Official Liquidator and Registrar of Companies, and therefore, the same is liable to set aside. The Scheme is a surreptitious mechanism to usurp the immovable property belonging to Respondent No.2 company, make profits by selling the said immovable property and there is no real intent to revive the company. As such, the Scheme not being *bona fide* and not being in public interest, requires to be set aside.

5.4 The Scheme of S.529 and 529A of the Companies Act, 1956, with respect to treatment of workmen as secured creditors has been given a go-by and not at all considered even remotely in the impugned order. The Respondent No.6 propounder is not even remotely

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involved in any similar business as that of Respondent No.2 company and, therefore, his lack of experience and knowledge in pharmaceutical industry ought to have been considered by the company court and it ought to have rejected the application made by Respondent No. 6. On the contrary, an unconditional approval was granted. The learned single judge in RP 498/2015 & RP 740-742/2015 has merely on the basis of an assurance of Learned Senior Counsel appearing for Respondent Nos.2 & 6, has disposed off the review without looking at the error apparent on the face of record.

5.5 On the above grounds, he prays that the impugned orders in COP 55/1997, CA 497/2013 and CA 2380/2013 in COP 55/1997 c/w COP 34/2014 and RP 498/2015 & RP 740-742/2015 be set aside.

6. Learned Counsel for the Applicants in CA 237/2023, Sri. Rakesh Bhatt would submitted as follows:

6.1 The applicants are not part of the employees union (appellants in OSA 8/2016), since only workmen were part of the employees union and the present applicants were office staff of Respondent No.2, who were not retrenched as on the date of closing down of Respondent No.2 Company. As such, the claims of the present applicants are distinct from that of the Employees' Union. That the scope of locus u/s 391 &392 of the Companies Act,1956, is very wide and any person interested in the affairs in the Company can prefer such an application. The applicants are only seeking for enforcement of the Scheme as sanctioned by the Company Court and there can be no impediment for the Court to direct the same since the propounder of the Scheme is bound by each and every term of the Scheme and any deviations therefrom would result in the sanctity of the order approving the Scheme being compromised.

6.2 The propounder of the Scheme cannot deal with the property of the Company in liquidation at his will and wish;

on the other hand, the propounder has to perform his duties as a trustee for the benefit of all stakeholders in terms of the Scheme as sanctioned by the Company Court. In the event, the propounder is unable to execute the Scheme as contemplated, he has to necessarily seek leave of the Company Court for modification of the Scheme. During enforcement of the Scheme, the property belonging to the company in liquidation is *custodia legis*, and therefore, there cannot be unilateral dealings in respect of such property.

6.3 Reliance was placed on Affidavit dated 23/04/2014 filed by Regional Director – Ministry of Corporate Affairs, Reply Statement of Official Liquidator dated 21/05/2014 and the Reply Affidavits filed by Respondent No.6 on 23/04/2014 and June 2014 to demonstrate that the Company Court has not taken into consideration any of these materials and no finding is recorded in respect of the same. Specifically, the warnings put forth by Regional Director – Ministry of Corporate Affairs and the Official

Liquidator that the propounder only has an intent to do real estate business has not been heeded to and consequently, the Respondent No.6 has proceeded to sell valuable immovable property belonging to Respondent No.2 Company in December 2023 to various third parties.

6.4 There is no intent whatsoever on the part of respondent no.6 propounder to revive the Company and afford employment opportunity to applicants and similarly placed employees, and therefore, there is violation of the Scheme.

7. Learned Counsel for the Applicants in CA 350/2023, Sri. Thomas Peter would adopt the submissions of Learned Counsel in CA 237/2023.

8. The party-in-person in CA 46/2024, Sri. S.Vasu, who appeared before this Court has submitted his Written Arguments as follows:

8.1 That he was an employee and shareholder of Respondent No.6 company. In terms of section 456(2) of

Companies Act, 1956, all properties, assets and effects of the company shall be deemed to be in custody of the Company Court and only with prior permission of the Company Court can the same be dealt with. He also reiterated the contents of Affidavit dated 23/04/2014 filed by Regional Director – Ministry of Corporate Affairs, Reply Statement of Official Liquidator dated 21/05/2014 and the Reply Affidavits filed by Respondent No.2 on 23/04/2014 and June 2014 to demonstrate that Respondent No.2 has violated his own undertaking in the Affidavits submitted to the Company Court.

8.2 The Scheme has not yet 'taken off' till today. Based on the judgment of the Bombay High Court in CA 243/2011 in COP No. 1068/1997, the Scheme is liable to be declared as null and void and consequently cancelled. Neither the shareholders nor the debenture holders nor unsecured creditors have been paid, as per the Scheme of Arrangement. It is admitted that employees' dues were paid and these payments were made not by Respondent

No. 6 propounder from his funds, but from the amounts realised from the sale of plant & machineries and infrastructure belonging to Respondent No.2 company.

8.3 Since the Scheme is not implemented and there is violation of the terms of Scheme, Respondent No.2 may be directed to implement the Scheme and all the sales made by Respondent No.6 be set aside.

9. Learned Senior Counsel Sri. Vikram Huilgol appearing for Sri. Sammith S, and Sri. Sammith S., counsel for Respondent Nos. 2 and 6 would broadly contend as follows:

9.1 The present appeal and the company applications are not maintainable, and the reliefs sought are inherently contradictory; there is a collusive exercise by some of the former employees of Respondent No.2.

9.2 The employees & the employees' union have all along failed to establish their claims before the competent authority under 1947 Act, as well as have repeatedly failed

to produce any material or Scheme for Revival of Respondent No.2 despite several opportunities being granted to them. In this regard, attention is drawn to the Order dated 27/07/2006 wherein the Learned Single Judge has clearly held that no Scheme was put forth by any of the employees or staff or their Union. The same has even been reiterated and observed even in Order dated 20/03/2012. Further, the employees or their Union have not even preferred any petition for adjudication of their claims before the Industrial Disputes Tribunal.

9.3 It was pointed out that the appellant union is contradicting its own earlier stance as can be observed from the stance taken during the remanded proceedings in COP 55/1997 wherein the winding-up of Respondent No.2 was opposed. However, at present they are seeking to set aside the order of revival of Respondent No.2. The proceedings of the Scheme of Arrangement and the Shareholders' meeting were also extensively referred to demonstrate that the employees are not serious in their

approach and are engaging in speculative litigation with vested interests.

9.4 The continuation of these proceedings would be an abuse of the process of law, as Respondent No.6 has spent considerable amounts to revive Respondent No.2 and owing to the present proceedings, the entire revival has come to a standstill. Even if Sections 391 & 392 of erstwhile Companies Act 1956 are to be considered, they deal with implementation of Scheme and it cannot be read strictly. There should be a liberal construction. In any event, the powers under these provisions should be exercised sparingly as laid down by the Apex Court in *SK Gupta vs. KP Jain*, (1979) 3 SCC 54. While the Court may certainly provide guidance for proper working of the Scheme, winding up or nullifying the Scheme should not be adopted as a matter of course.

9.5 There can be no rigid approach to implementation of the Scheme and the very purpose of corporate restructuring would be defeated should it be insisted that

the revived Company should operate its original business alone. In any event, the Memorandum of Association of 2nd respondent clearly demonstrates that the objects of company were wide in scope and included the power to sell & lease property. As such, any contention raised otherwise by the employees/staff/the Union that only the pharmaceutical business should be carried on is erroneous since the Memorandum of Association and the Scheme itself at Clause 13 allow dealing with property of the company. He places reliance on the decision of the Bombay High Court in *Shree Niwas GirniKamgar Kruti Samiti v. Rangnath Basudev Somani*, 2005 SC Online Bom 338, to state that Scheme cannot dictate revival of a particular business.

9.6 Our attention is also drawn to annexure enclosed with the Statement of Objections to the OSA, which evidences payment made to the employees of the Employees' Union at the time of retrenchment, and a further Memo is also placed on record demonstrating

payments made to staff members including the sums of Rs. 45,07,000/- & Rs. 45,98,000/- to the party-in-person. Reliance is also placed on the Possession Memo to demonstrate that the Official Liquidator having handed over possession of company property to Respondent No. 6 on 08/07/2015, the property belonging to 2nd respondent was no longer *custodia legis* upon approval of the Scheme. Reference is, also made to the proceedings as against KIADB, which culminated in WP No. 14961/2021 wherein one of us, has directed execution of Sale Deed in favour of Respondent No.2 by Order 17/03/2023 and consequently, the Sale Deed has been executed on 04/12/2023.

9.7 Further, the challenge to the acquisition proceedings by KIADB in respect of the immovable properties allotted to Respondent No.2 has also culminated in an Order dated 26/03/2024 in WA 859/2019 passed by a Co-ordinate Bench of this Court. It is contended that having fought a long list of litigations and finally on the brink of taking steps for revival of Respondent No.2 in the present OSA &

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CAs are impeding revival. In any event, the scheme has been substantially implemented inasmuch as the dues of all secured creditors, unsecured creditors, debenture holders and employees are cleared. He, therefore prays for dismissal of the OSA and all the CAs.

10. We have also heard learned Panel Counsel Sri. P.V. Chandrashekar appearing for KIADB, Sri. Jagadeeshgoud Patil representing Official Liquidator, and Smt. Prema Hatti, learned Central Government Counsel.

11. Having heard the learned counsel for the parties, and having perused the papers, we decline indulgence in these matters for the following reasons:

11.1 The entire object of winding-up and revival contemplated under the erstwhile 1956 Act is to ensure that wherever possible corporate entities should not be ordinarily liquidated and a reasonable opportunity of reviving them should be granted, in order to fulfil the

claims of all stakeholders. Winding up of a legal entity has several consequences, needs no research.

11.2 No doubt Section 392 of Companies Act, 1956 has a wide amplitude, and the Company Court should ensure that the Scheme continues to work and operate. However, it is also equally important to note that a scheme spread over a long period of time inevitably encounters practical hurdles that cannot be contemplated at the time of approval of the Scheme. As such, when majority stakeholders have not raised any issue regarding the implementation of the Scheme, and when admittedly both the workmen & staff of 2nd respondent have been paid either the retrenchment compensation or the One Time Settlement amount, it would be upsetting the proverbial apple cart in the event this Court interferes in the implementation, which we opine is presently underway, more particularly when the Memorandum of Association as well as the Scheme both contemplate a wide scope including selling & leasing of land. In any event, the

learned counsel appearing for Respondent Nos. 2 & 6 would submit that the sale of the immoveable property is only to industrial concerns since the said property is situate within the KIADB Industrial Estate and no other purpose would be permitted. A fair submission is made that the Respondent Nos. 2 & 6 would make sincere attempt to impress upon such industrial concerns to employ eligible & qualified workmen/employees should they make applications in this regard. We appreciate this gesture.

11.3 While it has been brought to our attention that the decision of Bombay High Court in *Shri Niwas* (supra) has been set aside by the Apex Court in *Meghal Homes (P) Ltd. v. Shree Niwas Girni KK Samiti*, (2007) 7 SCC 753, we find that the Apex Court has remanded the matter back for fresh consideration on account of several proposals by several stakeholders having not been considered adequately. However, the Apex Court has not interfered in the finding of Bombay High Court insofar as it pertains to

requiring flexibility with respect to revival of a company and not being rigid as to revival of a particular business only.

11.4 The present case is one where Respondent No.2 has been embroiled in litigation since the last thirty years and several of the claims have long been rendered either redundant or infructuous. Even the creditors themselves, both secured & unsecured, have approved the Scheme of Arrangement propounded by Respondent No.6. Such being the case, ordinarily, this Court cannot exercise a review of the factual submissions made therein. However, given that the matter has been thoroughly contested by both the parties, we have given our anxious consideration to all the facts put forth by the parties and considered various materials placed before us.

11.5 The Learned Single Judge at the time of consideration of COP 55/1997 in Order dated 27/07/2006 held as under:

*"12. Company Application No. 448/2006 is filed in Company Petition No. 55/1997 seeking for impleading. It is clear from a perusal of the application that the said application has been filed by Shrishma Employees' Union and according to the averments made in the application the applicant – Union claims that its members are the former employees of the respondent – Company and the Labour Court has rejected reference and the order passed by the Labour Court rejecting the application for recovery of arrears under Section 33(c) (2) of the Industrial Disputes Act and the same is pending consideration in W.P.Nos. 4513 and 4514/2006. In any view of the matter, it is clear from the proceedings of the B.I.F.R., and the material on record that **all possibilities of reviving the respondent – Company were explored and only thereafter, recommendation has been made for winding-up the respondent – Company and if the said recommendation is accepted, the question of considering the Company Petition 55/1997, itself would not survive for consideration. The applicant is not a proper and necessary party to the petition. Therefore, the Company Application No. 448/2006 is also liable to be dismissed.***

13. So far as the Company Application No. 732/2006 is concerned, it is also filed in Company Petition No. 55/1997 by nineteen employees who are working in the respondent – Company. I have perused the averments made in the application that it is filed on 20.07.2006 seeking for permission to furnish a proposal for taking over the first respondent in the application and reviving the same.

However, proposal is not submitted and the manner in which the amount of Rs.12 Crores, which is due to be paid to the Creditors, would be mobilised is also not stated and it is clear that when the operating agency had advertised calling for Change of Management, no proposal was filed by the applicants in Company Application No. 448/2006 or the applicants in Company Application No. 732/2006 and the only applicant in Company Application No. 613/2006 had given a proposal which was rejected and wherefore, it is clear that there is no merit in Company Application No. 732/2006 and the same is liable to be dismissed.”
(emphasis supplied)

11.6 Although, the said order of learned Single Judge was set aside by a Co-Ordinate Bench, it is pertinent to note that it was done only on the ground that they were proper & necessary parties and therefore they should be heard before passing any order. Thereafter, even in proceedings post remand, learned Single Judge by Order dated 20/03/2012 has observed as follows:

“3. Having heard the learned counsel appearing for the rival parties, the subsequent position which is evident is that the learned counsel representing the Employees Union and the staff members had an opportunity to put forth their contentions. But, they

have not put forth any scheme before this Court whereby the company can be kept afloat. In the meanwhile, during the pendency of these petitions, the assignee of the secured creditors however filed an application under Section 391 of the Companies Act in CA No. 321/2010 praying this Court for a direction to convene the meeting of the shareholders, secured creditors and unsecured creditors to consider the proposal for revival of the respondent company. This Court allowed the said application on 30.06.2010 and fixed the meeting schedule. Accordingly, the meeting of the shareholders and the creditors were held. The scheme proposed by the assignee of the secured creditor did not secure the approval of the unsecured creditors and the shareholders. In that view, the scheme has failed and as such the petitions for winding up had to be considered on its own merits and accordingly, the same is being considered at this juncture.

4. In a circumstance where the Hon'ble Division Bench had set aside the earlier order of winding up only on the basis that the Employees Union and the staff members were not heard and in that situation where the subsequent efforts made by the assignee of the secured creditor to revive the company had failed and where there is no scheme for revival of the company, the earlier dated 27.07.2006 passed by this Court would be relevant to be noticed at this juncture instead of reassessing the material once over again. In that view, a perusal of the said order would indicate that this Court had made detailed reference to the proceedings which were held before the BIFR. In that context, it is necessary to notice that in the hearing held by BIFR on 07.04.1999, the Bench

was of the view that the respondent-company is to be declared as a sick company under Section 3(1) (o) of the Sick Industrial Companies (Special Provisions) Act, 1985. The Industrial Development Bank of India was appointed as an operating agency to prepare the rehabilitation scheme and the hearing was thereafter held on 12.03.2003. Despite the subsequent proceedings before the BIFR, the revival was not possible and the show cause notice for winding up was ordered by the BIRF on 26.07.2005 and the hearing was held on 02.01.2006 to consider the objection. Subsequent thereto, having noticed that only course to be adopted is to wind-up the company has referred the matter to this Court. In such circumstance, where the BIFR had made all efforts to consider the revival of the respondent company and had failed, and further before this court also, all efforts of revival have failed and when it is not in dispute that the respondent company is due the amounts payable to the creditors, the only recourse would be to wind up the respondent company so as to enable the Official Liquidator to realise the assets and pay the creditors.

5. It is to be noted that the employees union had also contended with regard to certain arrears payable to them regarding which the applications have been filed under Section 33-C (2) of 1947 Act and the same were pending. Ultimately, in the process of winding up, only the workmen, all other creditors who are entitled to receive the amount are entitled to receive the amount will be able to make the

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claim before the Official Liquidator. When the claims are invited, the interest of all parties would be protected."

(emphasis supplied)

11.7 The above order has attained finality, and no challenge has been laid to the same. It becomes evident from the above that although the Employees' Union and some of the employees demonstrated their interest towards reviving Respondent No.2, no concrete action was taken by them towards putting forth a scheme, much less propounding a scheme approved by Creditors. The employees & their union have miserably failed to even demonstrate their *bona fide*. It can be reasonably inferred that there has been a consistent attempt to thwart the revival and, therefore, their claim deserves to be dismissed on this very ground. It is settled position of law that a party cannot approbate and reprobate at the same time, and the conduct of the Employees' Union is one of the same and deserves to be met with consequences. A bare perusal of the shareholder meeting held on 23/01/2014 pursuant to the Order dated 19/11/2013 in

CA 2064/2013, which is available through the Chairman's Report dated 05/02/2014, would demonstrate that although notices were published, no proposal was put forth by the Employees' Union or the staff members towards the scheme.

11.8 It is clearly seen from the Order dated 31/01/2012 in WP No. 4513/2004 and 1951-2081/2012 (L-RES) where the dismissal of Employees' Application filed under section 33(C)(2) of 1947 Act was impugned, the same came to be partly allowed and the employees were granted liberty to file fresh applications under section 33(C)(2) of the Act. However, admittedly, the employees have not approached the competent tribunal for adjudication of their claims as has been observed in the impugned order dated 11/04/2016 entered in RP 498/2015 c/w RP 740-742/2015. The employees cannot now seek adjudication of the same through the present proceedings as a surrogate. In fact, against the order dated 31/01/2012 the employees preferred WA No. 299/2013, which came to be

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disposed off on 02/09/2014. Subsequently RP No. 1051/2014 came to be filed and that too met the same fate by a detailed Order. Thereafter, employees filed WA No. 1021/2016 & 646-777/2017 (L-RES), wherein a Co-Ordinate Bench has observed that there was deliberate & intentional delay in preferring the appeal and even on merits there was no scope for interference in the order passed by the learned Single Judge. Therefore it dismissed the same on 06/11/2019.

11.9 The appellants have also filed an application before the Assistant Labour Officer and Conciliation Authority (in LD-IDM/128/2022-LD-DO-6-L.S.) for declaring that the act of retrenchment by the management of Respondent No.2 on 27/04/1994 is illegal. The same also has been dismissed by the competent authority by Order dated 19/02/2022. The same having not been challenged by the employees till date, it has attained finality regardless of infirmities, if any. Statutory orders, howsoever bad arguably they may be, would remain on

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record for all ostensible purposes until they are set at naught in appropriate legal proceedings. In other words they have legal consequences.

11.10 Even the present appeal was dismissed for non-prosecution *vide* order dated 05/09/2023 and the application for restoration also came to be rejected on 23/09/2023. However, another application came to be filed by the appellants in IA No.3/2023, which came to be allowed on 09/01/2024 with the following observation:

"...keeping in view the reasons assigned in the affidavit consisting of paragraph Nos.1 to 10 and since the doctrine of audi alterem partem is very much required to be considered and an opportunity has to be provided to both the parties to the proceedings, it is deemed appropriate to allow the application.

Hence, keeping in view the submission of the learned Senior Counsel and the reasons assigned in the affidavit accompanying the application, I.A.No.3/2023 is allowed. Consequently, the order dated 05.09.2023 is recalled and the appeal in O.S.A.No.8/2016 is restored to file..."

It is clear from the above that sufficient opportunity is granted to the appellants to put forth their case.

Nevertheless, the appellants have failed to make out any case for interference.

11.11 With respect to the immovable property being *custodia legis* in terms of Section 466 of 1956 Act, while the same is true when a winding up order is passed, that is not applicable when the company is ordered to be revived by approving a Scheme of Arrangement proposed by a propounder. In the present case, the Scheme having been proposed & approved and the Official Liquidator having transferred possession of the movable & immovable property of the 2nd respondent-Company to Respondent No. 6, the same cannot be said to be *custodia legis* any longer.

11.12 *Insofar* as CA 237/2023, CA 350/2023 & CA 46/2024 are concerned, the same are also filed by some of the former employees/ staff members of Respondent No.2. These persons were also parties to all the above proceedings and have consistently taken a stance supporting that of the Employees Union. As such, the

present applications are merely an attempt to prolong the proceedings and is yet again a classic case of approbation and reprobation which does not merit consideration, owing to lack of *bona fides* on the part of the said applicants. That apart, the grounds raised by them have been answered in the preceding paragraphs.

11.13 One last thing cannot be left unmentioned: we had suggested to the Respondent No.2 & the employees union to sit across the table and negotiate some amicable settlement, years having passed after the workmen ceased to be in the employment. However, that did not much march. Despite that the Respondent No.2 expressed its willingness to pay some amount *ex gratia* only to the workmen who were borne on record as on the eventful day; this offer, learned Sr. Advocate Mr.Vikram Huilgol appearing for the Company said, was only for buying peace. This gracious proposal too fell on the deaf ears. It is unfortunate that matters like these are prolonged for over thirty years. Even successful resolution applicants

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such as Respondent No.6 herein, who have invested substantial money into propounding the Scheme and satisfying creditors & stakeholders, are made to suffer at the hands of litigants such as these appellants and the applicants, who are nothing but trying to engage in a proverbial dead-horse flogging.

In the above circumstances, we find this appeal & applications to be devoid of merits and accordingly, dismiss the same, costs having been reluctantly made easy.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(C M JOSHI)
JUDGE

Snb/cbc